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JUN 17 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of the Cable Television)
Consumer Protection and Competition)
Act of 1992)
)
Broadcast Signal Carriage Issues)

MM Docket No. 92-259

TO: The Commission

**REPLY TO OPPOSITION TO
PETITIONS FOR RECONSIDERATION**

Continental Cablevision of Western New England, Inc. ("CCWNE") hereby submits its Reply to NAB's Opposition to the Petitions For Reconsideration of Rule Section 76.62(a) of the March 29, 1993 Report and Order. CCWNE supports the position of NCTA and Newhouse Broadcasting with respect to this regulation. In particular, CCWNE believes that cable operators and television broadcasters should be allowed to mutually agree to the partial carriage of non-must carry stations.^{1/}

A. BACKGROUND

CCWNE operates cable television systems serving approximately 120,000 customers in 23 cities and towns in western Massachusetts. These communities lie more than 90 miles west of Boston, outside the off-air reach of the Boston television

^{1/} CCWNE also requests, to the extent necessary, modification or clarification of Section 76.64(k).

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stations. The western Massachusetts market is served by two Springfield commercial broadcast stations and a Springfield PBS station. The news coverage provided by these stations is primarily local and does not concentrate on events occurring in Boston. In response to a desire for news and information from the state capital, CCWNE negotiated private agreements with two Boston stations in 1989 allowing delivery of state-oriented programming to cable subscribers in western Massachusetts. This has been a highly popular service.

Under these partial carriage agreements, CCWNE carried just locally-produced programming of the two Boston stations. The programming was placed on CCWNE's own "community" programming channel. CCWNE did not carry the full broadcast schedule of these Boston stations, because the associated compulsory royalty fees under the Copyright Act would be prohibitive, and because CCWNE does not have the channel capacity or interest in carrying the full broadcast schedule of each station. Moreover, the local Springfield stations have network non-duplication and syndicated exclusivity rights under FCC rules and could require CCWNE to black-out most of the Boston stations' programming, leaving little more than what CCWNE already carried. The negotiated arrangements under which Continental carried station-produced programming have served western Massachusetts residents well. We understand that other cable operators across the county have similar carriage arrangements.

In adopting Section 76.62(a), the FCC unnecessarily extended the statutory ban on partial carriage arrangements to non-must carry stations. If this provision is not limited to must carry stations, a host of beneficial arrangements (like those of CCWNE) will be precluded. Without these arrangements, broadcasters, cable operators, and the public will all suffer.

B. THE RULE SHOULD NOT APPLY TO
NON-MUST CARRY STATIONS

The Commission has misconstrued the scope of Section 614(b)(3)(B) of the 1992 Act. The inclusion of the anti-"cherry-picking" provision within the statutory section specifically devoted to must carry requires that the provision be interpreted to apply only to must carry stations. Had Congress wanted the prohibition to apply to retransmission consent stations, it presumably would have included a similar prohibition in Section 325. In any event, the prohibition makes no sense when applied to retransmission consent stations. In those cases, there is no obligation on the cable operators to carry the signal at all, and the parties are generally free to negotiate appropriate carriage terms. There is no logical basis to deny the parties the right to negotiate over the percentage of the signal to be carried.

C. CONSENT OF THE ORIGINATING STATION SHOULD
BE ALLOWED

The Commission has ignored the fact that there is a fundamental difference between unilateral "cherry-picking" (i.e., cable carriage of a broadcast signal under the compulsory license without benefit of station consent) and consensual arrangements for partial carriage. Indeed, Congress' concern with "cherry-picking" was presumably limited to non-consensual arrangements. See House Report 102-628 (June 29, 1992) at 93. It simply is not "cherry-picking" when a station consents to partial carriage. No violation of Congressional intent or the purpose or policy of Section 614(b)(3)(B) would occur should the Commission allow the originating station to consent to partial carriage.

D. THE RULE SHOULD NOT APPLY RETROACTIVELY TO
EXISTING AGREEMENTS

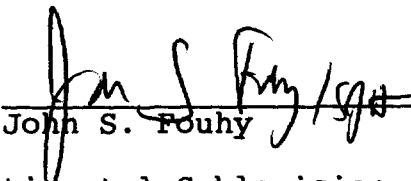
Nothing in the express language of the statutory provision, the subsection's legislative history, or the structure of the Act as a whole, indicates that Congress intended to retroactively invalidate pre-existing agreements for partial carriage of a broadcast signal. Thus, the Commission should allow for "grandfathering" of pre-existing agreements to minimize disruption to all involved. Rule Section 76.62(a) should be so amended.

Conclusion

In summary, CCWNE joins NCTA and Newhouse Broadcasting in asking the Commission to reconsider its finding that cable systems must carry the entire program schedule of any broadcast station and allow partial carriage where it results from the very type of voluntary bargain that retransmission consent was designed to engender.

Respectfully submitted,

**CONTINENTAL CABLEVISION OF
WESTERN NEW ENGLAND, INC.**

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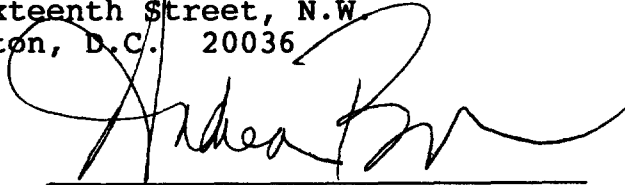
CERTIFICATE OF SERVICE

I, Andrea Brown, secretary of Cole, Raywid & Braverman, certify that copies of the REPLY TO OPPOSITION TO PETITIONS FOR RECONSIDERATION were sent via first class mail, postage pre-paid on this 17th day of June, 1993, to the following:

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A handwritten signature in dark ink, appearing to read 'Andrea Brown', is written over a horizontal line.

Andrea Brown